

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

RAYMUNDO'S FOOD GROUP, LLC
Employer

and

Case 13-RC-244834

UNITED FOOD AND COMMERCIAL
WORKERS LOCAL 881
Petitioner

ORDER

The Employer's Requests for Review of the Regional Director's Decision and Direction of Second Election and the Regional Director's Decision and Certification of Representative are denied as they raise no substantial issues warranting review.¹

JOHN F. RING,	CHAIRMAN
MARVIN E. KAPLAN,	MEMBER
WILLIAM J. EMANUEL,	MEMBER

Dated, Washington D.C., May 5, 2020.

¹ In denying review, we note that the factors enumerated in *Taylor Wharton Division*, 336 NLRB 157 (2001), are used to determine whether misconduct warrants the setting aside of an election; these factors do not determine whether misconduct has occurred in the first instance. Although the Hearing Officer and Regional Director mischaracterized *Taylor Wharton* in this regard, we need not pass on whether Victoria's threat was misconduct in the first instance because even assuming that it was, the Hearing Officer and Regional Director's application of the *Taylor Wharton* factors correctly determined that the threat did not warrant setting the election aside.

Contrary to his colleagues, Member Emanuel finds, in agreement with the Hearing Officer, that the statements by the Employer's labor consultant that the "federal government" would "knock on our doors" was ambiguous. It is unclear what Flores meant by "federal government," and he never referred to immigration authorities, deportation, or employees' legal status. In light of the vagueness of the statements, Member Emanuel finds that employees would not reasonably understand them as an immigration-related threat. Accordingly, he would grant the Employer's first request for review and overrule the Petitioner's objection.